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12-28-01

Approved for use through 10/31/2002 OMB 0651-0032  
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**UTILITY  
PATENT APPLICATION  
TRANSMITTAL**

(Only for new nonprovisional applications  
under 37 CFR 1.53(b))

Attorney Docket No.	6823D
First Inventor	Gretchen Louise Elder
Assignee	The Procter & Gamble Company
Title	ABSORBENT ARTICLE AND METHOD FOR MAINTAINING OR IMPROVING SKIN HEALTH
Express Mail Label No.	ET283986125US

PTO/SB/05 (2-01)  
10/06/01  
12/20/01

**APPLICATION ELEMENTS**  
See MPEP Chapter 600 concerning utility patent application contents.

**Box Patent Application**  
ADDRESS TO: Assistant Commissioner for Patents  
Washington, D.C. 20231

1. ☒ Fee Transmittal Form (e.g., PTO/SB/17)  
(Submit an original, and a duplicate for fee processing)
2. ☒ Specification Total Pages [56]  
(preferred arrangement set forth below)
  - Descriptive Title of the Invention
  - Cross References to Related Applications
  - Statement Regarding Fed sponsored R&D
  - Reference to sequence listing, a table, or a computer program listing appendix
  - Background of the Invention
  - Brief Summary of the Invention
  - Brief Description of the Drawings (if filed)
  - Detailed Description
  - Claim(s)
  - Abstract of the Disclosure
3. ☒ Drawing(s) (35 USC §113) Total Sheets [7]
4. ☐ Oath or Declaration Total pages [2]
  - a. ☐ Newly executed (original or copy)
  - b. ☐ Copy from a prior application (37 CFR §1.63(d))  
(for continuation/divisional with Box 17 complete)
    - i. ☐ **DELETION OF INVENTORS**  
Signed statement attached deleting inventor(s)  
named in the prior application,  
see 37 CFR §§1.63(d)(2) and 1.33(b).
5. ☐ Application Data Sheet. See 37 CFR §1.76
6. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
7. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
  - a. ☐ Computer Readable Form (CRF)
  - b. Specification Sequence Listing on:
    - i. ☐ CD-ROM or CD-R (2 copies); or
    - ii. ☐ Paper
  - c. ☐ Statement verifying identity of above copies

**ACCOMPANYING APPLICATION PARTS**

8. ☐ Assignment Papers (cover sheet & document(s))
9. ☐ 37 CFR 3.73(b) Statement ☐ Power of Attorney  
(when there is an assignee)
10. ☐ English Translation Document (if applicable)
11. ☐ Information Disclosure ☐ Copies of IDS  
Statement (IDS)/PTO-1449 Citations
12. ☐ Preliminary Amendment
13. ☒ Return Receipt Postcard (MPEP 503)  
(Should be specifically itemized)
14. ☐ Certified Copy of Priority Document(s)  
(if foreign priority is claimed)
15. ☐ Nonpublication Request under 35 U.S.C.  
122(b)(2)(B)(i). Applicant must attach form  
PTO/SB/35 or its equivalent.
16. ☒ Other:
  - a. Remarks Accompanying Filing Papers
  - b. Request for Interference With Patent Under  
37 C.F.R. 1.607
  - c. Petition to Delete Inventors Under 37 C.F.R.  
1.63(D)(2) and 1.33(B)

17. If a **CONTINUING APPLICATION**, check appropriate box and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR §1.76:

☐ Continuation ☒ Divisional ☐ Continuation-in-part (CIP) of prior application No. 08/926,532

Prior application information: Examiner: D. Ruhl Group/Art Unit: 3761  
For **CONTINUATION OR DIVISIONAL APPS** only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

**19. CORRESPONDENCE ADDRESS**

☒ Customer Number (Insert Customer No. here) 27752

Name (Print/Type)	Caroline H. Wei-Berk	Registration No. (Attorney/Agent)	45,203
Signature	<i>Caroline H. Wei-Berk</i>	Date	12/20/01

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(Revised for P&G use 12/7/01)



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**FEE TRANSMITTAL  
for FY 2002**

Patent fees are subject to annual revision

**Complete if Known**

Application Number

Confirmation Number

Filing Date

December 20, 2001

First Named Inventor

Gretchen Louise Elder

Examiner Name

Group/Art Unit

TOTAL AMOUNT OF PAYMENT (\$)**740.00**

Attorney Docket No.

**6823D****METHOD OF PAYMENT (check one)**

- 1.
- ☒
- The Commissioner is hereby authorized to charge indicated fees and credit any over payments to:

Deposit Account Number **16-2480**Deposit Account Name **The Procter & Gamble Company**☒ Charge Any Additional Fee Required Under status 37 CFR §§1.16 and 1.17**FEE CALCULATION****BASIC FILING FEE — Large Entity**

Code (\$)	Fee Description	Fee Paid
101 740	Utility filing fee	[740]
106 330	Design filing fee	[]
108 740	Reissue filing fee	[]
114 160	Provisional filing fee	[]
<b>SUBTOTAL (1)</b>		<b>(\$)[740]</b>

**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE — Large Entity**

	Extra Claims	Fee from Below	Fee Paid
Total Claims	[5] - 20** = [] x []	[]	= []
Independent Claims	[1] - 3** = [] x []	[]	= []
Multiple Dependent		[]	= []

\*\* or number previously paid, if greater; For Reissues, see below

Code (\$)	Fee Description
103 18	Claims in excess of 20
102 84	Independent claims in excess of 3
104 280	Multiple dependent claim, if not paid
109 84	**Reissue independent claims over original patent
110 18	**Reissue claims in excess of 20 & over original patent

**SUBTOTAL (2) (\$)[0]****FEE CALCULATION (continued)****3. ADDITIONAL FEES**

Code (\$)	Fee Description	Fee Paid
105 130	Surcharge-late filing fee or oath	[]
127 50	Surcharge-late provisional filing fee or cover sheet	[]
139 130	Non-English specification	[]
147 2,520	For filing a request for <i>ex parte</i> reexamination	[]
112 920*	Requesting publication of SIR prior to Examiner's action	[]
113 1,840*	Requesting publication of SIR after Examiner's action	[]
115 110	Extension for reply within 1 <sup>st</sup> month	[]
116 400	Extension for reply within 2 <sup>nd</sup> month	[]
117 920	Extension for reply within 3 <sup>rd</sup> month	[]
118 1,440	Extension for reply within 4 <sup>th</sup> month	[]
128 1,960	Extension for reply within 5 <sup>th</sup> month	[]
119 320	Notice of Appeal	[]
120 320	Filing a brief in support of an appeal	[]
121 280	Request for oral hearing	[]
138 1,510	Petition to institute a public use proceeding	[]
140 110	Petition to revive - unavoidable	[]
141 1,280	Petition to revive - unintentional	[]
142 1,280	Utility issue fee (or reissue)	[]
143 460	Design issue fee	[]
122 130	Petitions to the Commissioner	[]
123 50	Petitions related to provisional applications (37 C.F.R. 1.17(q))	[]
126 180	Submission of Information Disclosure Statement	[]
146 740	Filing a submission after final rejection (37 CFR § 1.129(a))	[]
149 740	For each additional invention to be examined (37 CFR § 1.129(b))	[]
179 740	Request for Continued Examination (RCE)	[]
169 900	Request for expedited examination of a design application	[]
091 1280	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	[]
	Other fee (specify) _____	[]
	Other fee (specify) _____	[]

\* Reduced by Basic Filing Fee Paid

**SUBTOTAL(3) (\$)[ ]**

SUBMITTED BY				Complete (if applicable)	
Name (Print/Type)	<b>Caroline H. Wei-Berk</b>	Registration No.	<b>45,203</b>	Telephone	<b>(513) 626-1139</b>
Signature	<i>Caroline H. Wei-Berk</i>	(Attorney/Agent)		Date	<b>12/20/01</b>

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Date of Deposit Dec 20, 2001

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Caroline Wei-Berk 45,203  
Attorney mailing application Reg No  
Caroline Wei-Berk  
Signature of Attorney mailing application

Case 6823D  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Divisional Application of

G. Elder et al.

Serial No.

Filed:

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:

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Group Art Unit:

Examiner:

Title: **ABSORBENT ARTICLE AND METHOD FOR MAINTAINING  
OR IMPROVING SKIN HEALTH**

REMARKS ACCOMPANYING FILING PAPERS

The Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

The present application is a divisional of co-pending U.S. patent application Serial No. 08/926,532 (the parent '532 Application), filed in the name of Elder et al. on September 10, 1997, and claims the benefit of the filing date under 35 U.S.C. §120.

REMARKS ACCOMPANYING FILING PAPERS

The present application is filed to provoke an interference between the present application and U.S. Patent 6,296,862, entitled "Absorbent Article which Maintains or Improves Skin Health", issued to Paul et al. on October 2, 2001, and assigned to Kimberly-Clark Corporation. Claims 1-5 of the present application correspond exactly or substantially to claims 1, 5 and 9-12 of the '862 Patent.

In the present application, Applicants have amended the Title, the Summary and the Abstract so that they are directed to a method for maintaining or improving skin health and an absorbent article suitable for such method of use. Detailed description of the absorbent article can be found in Section IV (beginning on Page 21, line 27) and Section V (beginning on Page 31, line 15) of the specification. Applicants also have updated the status of several U.S. Patent applications (Page 25, lines 16-17; Page 29, lines 23-25). These amendments present no new matter.

Previously, PCT publication WO 95/16562 (the '562 Publication) was incorporated by reference in the parent application (see Page 25, lines 7-13 of the parent '532 Application). Applicants hereby incorporate directly from the '562 Publication vapor permeable backsheets having specific Water Vapor Transmission Rates, including the disclosure and examples (see Page 23, line 22 to Page 24, line 7 and Examples 6-7 on Page 53, line 13 -Page 55, line 25 of the present application). Applicants also have incorporated directly from the '562 Publication the Water Vapor Transmission Test (see Test B on Page 50, line 11 to Page 51, line 8 of the present application). Specifically, the disclosure can be found on Page 1, lines 34-37; Page 2, lines 1-9 and 17-33; Page 3, lines 13-17; and Page 14, lines 4-7 of the '562 Publication. The examples can be found on Pages 22-24 and Pages 27-29 of the '562 Publication. The Water Vapor Transmission Test can be found on Page 20, line 9 to Page 21, line 17 of the '562 Publication. Therefore, the direct incorporation of the disclosure, examples and test method present no new matter.

The present application claims the benefit of the September 10, 1997 filing date under 35 U.S.C. §120 of the parent '532 Application. The support for claims 1-5 of the present application can be found in Applicants' disclosure as follows:

PRESENT CLAIMS	SUPPORT IN APPLICANTS' DISCLOSURE
<p>1. A disposable absorbent article which defines a front waist region, a rear waist region, and a crotch region which interconnects said front and rear waist regions, said absorbent article comprising:</p>	<p>Page 30, lines 7-10:            "The diaper 50 is preferably applied to a wearer by positioning one of the waist regions of the diaper, preferably <u>the second waist region 58</u>, under the wearer's back and drawing the remainder of the diaper between the wearer's legs so that the other waist region, preferably <u>the first waist region 56</u>, is positioned across the front of the wearer." (emphasis added); and</p> <p>Page 26, lines 21-23:            "While the skilled artisan will recognize that a diaper is usually described in terms of having a pair of waist regions and <u>a crotch region between the waist regions</u>, . . ." (emphasis added)</p>
<p>a) a vapor permeable backsheet which defines a Water Vapor Transmission Rate of at least about 2300 grams per square meter per 24 hours, calculated according to a Water Vapor Transmission Test as set forth herein;</p>	<p>Page 23, lines 29-31:            "... <u>breathable</u> plastic films as the diaper <u>backing materials</u>. For the purposes of the present invention, a film is "breathable" if it has a <u>water vapor transmission rate</u> of at least 100 g/m<sup>2</sup>/24 hours as calculated using the test method . . ." (emphasis added); and</p> <p>Page 55, Table III:            "WVTR of 2300 g/m<sup>2</sup>/24 hr"</p>

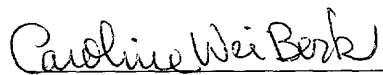
<p>b) a liquid pervious topsheet which is positioned in facing relation with said backsheet;</p>	<p>Page 21, lines 34-36:          "Disposable absorbent articles typically comprise <u>a liquid pervious topsheet</u>, a liquid impervious backsheet and an absorbent core positioned between the topsheet and the backsheet."          (emphasis added);</p> <p>Page 25, lines 18-19:          "The backsheet and the topsheet are positioned adjacent the garment facing surface and the body facing surface, respectively, of the absorbent core."; and</p> <p>Figure 1 (showing topsheet and backsheet in facing relation)</p>
<p>c) an absorbent core located between said backsheet and said topsheet; and</p>	<p>Page 26, lines 10-13:          "As shown in Figure 1, the diaper 50 preferably comprises a liquid pervious topsheet 520; a liquid impervious backsheet 530 joined with the topsheet 520; <u>an absorbent core 540 positioned between the topsheet 520 and the backsheet 530</u>, . . . "          (emphasis added)</p>
<p>d) a skin care composition on at least a portion of a wearer-contacting surface of said absorbent article which includes from about 10 to about 95 weight percent of an emollient and from about 5 to about 90 weight percent of a wax.</p>	<p>Page 4, lines 12-14:          "... the term 'treated article' means an absorbent article having a skin care composition on or migratable to at least one wearer-contacting surface of that article.";</p> <p>Page 13, lines 28-30:          "Preferably, the composition will comprise from about 10 to about 95%, . . . by weight, of the emollient."</p> <p>Page 18, lines 26-27:          "When present, the composition will typically comprise from about 5 to about 90% of the immobilizing agent."</p> <p>Page 18, lines 12-13:          "Other types of ingredients that can be used as immobilizing agents, . . . include waxes . . ."</p>
<p>2. The absorbent article of claim 1 wherein said composition further comprises a viscosity increasing agent selected from the group consisting of alkyl galactomannan, silica, talc, magnesium silicate, sorbitol, colloidal silicone dioxide, magnesium aluminum silicate, zinc stearate, sesquioleate, cetyl hydroxy ethyl cellulose and other modified celluloses, and mixtures thereof.</p>	<p>Page 21, lines 19-23:          "Other suitable viscosity increasing agents include alkyl galactomannan, silica, talc, magnesium silicate, sorbitol, colloidal silicone dioxide, magnesium aluminum silicate, zinc stearate, wool wax alcohol, sorbiton, sesquioleate, cetyl hydroxy ethyl cellulose and other modified celluloses."</p>

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<p>3. The absorbent article of claim 1 wherein said emollient is selected from the group consisting of sucrose ester fatty acids, fatty acid esters, alkyl ethoxylates, fatty acid ester ethoxylates, polysiloxanes, fatty alcohol ethers, polyethylene glycol and derivatives thereof, propylene glycol and derivatives thereof, glycerine and derivatives thereof, propoxylated fatty alcohols, fatty esters of polyhydroxy alcohols, lanolin and its derivatives, and mixtures thereof.</p>	<p>Page 11, lines 7-17:          "Representative emollients useful in the present invention include, but are not limited to, emollients that are petroleum-based; <u>sucrose ester fatty acids</u>; <u>polyethylene glycol and derivatives</u> thereof; humectants; <u>fatty acid ester type</u>; <u>alkyl ethoxylate type</u>; <u>fatty acid ester ethoxylates</u>; fatty alcohol type; <u>polysiloxane type</u>; <u>propylene glycol and derivatives</u> thereof; <u>glycerine and derivatives</u> thereof, including glyceride, acetoglycerides, and ethoxylated glycerides of C<sub>12</sub>-C<sub>28</sub> fatty acids; triethylene glycol and derivatives thereof; spermaceti or other waxes; fatty acids; <u>fatty alcohol ethers</u>, particularly those having from 12 to 28 carbon atoms in their fatty chain, such as stearic acid; <u>propoxylated fatty alcohols</u>; other <u>fatty esters of polyhydroxy alcohols</u>; <u>lanolin and its derivatives</u>; kaolin and its derivatives; any of the monographed skin care agents listed above; or mixtures of these emollients." (emphasis added)</p>
<p>4. The absorbent article of claim 1 wherein said emollient is a petroleum-based emollient selected from the group consisting of petrolatum, mineral oil, and mixtures thereof.</p>	<p>Page 11, lines 17-19 and lines 23-24:          "Suitable petroleum-based emollients include those hydrocarbons, or mixtures of hydrocarbons having chain lengths from 16 to 32 carbon atoms"; and          "Petrolatum and mineral oil are particularly preferred emollients for compositions of the present invention."</p>
<p>5. The absorbent article of claim 1 wherein said wax is selected from the group consisting of carnauba, ozokerite, beeswax, candelilla, paraffin, ceresin, esparto, ouricuri, rezowax, isoparaffin, other mined and mineral waxes, and mixtures thereof.</p>	<p>Page 18, lines 12-15:          "Other types of ingredients that can be used as immobilizing agents, . . . include waxes such as carnauba, ozokerite, beeswax, candelilla, paraffin, ceresin, esparto, ouricuri, rezowax, isoparaffin, and other known mined and mineral waxes."</p>

Applicants respectfully request examination of the present application and a declaration of interference between the present application and the '862 Patent.

Respectfully submitted,  
 For: Elder et al.

  
 Caroline Wei-Berk  
 Attorney for Applicants  
 Reg. No. 45,203  
 (513) 626-1139

Dec. 20, 2001  
 Customer No. 27741

"Express Mail" mailing label number ET28398612505  
Date of Deposit Dec 20, 2001

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Caroline Wei-Berk 45,203  
Attorney mailing application Reg. No.  
Caroline Wei-Berk  
Signature of Attorney mailing application

Case 6823D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Divisional Application of

G. Elder et al.

Serial No.

Filed:

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:

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Group Art Unit:

Examiner:

Title: **ABSORBENT ARTICLE AND METHOD FOR MAINTAINING  
OR IMPROVING SKIN HEALTH**

**REQUEST FOR INTERFERENCE**  
**WITH PATENT UNDER 37 C.F.R. §1.607**

The Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This Request for Interference is filed under 37 C.F.R. §1.607. The accompanying divisional application and the present Request are being filed in order to provoke an interference between Applicants' divisional application and U.S. Patent 6,296,862 entitled "Absorbent Article Which Maintains or Improves Skin Health" (hereinafter "the '862 Patent"). The '862 Patent is issued to Paul et al. on October 2, 2001, and is assigned to Kimberly-Clark Corporation.

**REQUEST FOR INTERFERENCE**

Pursuant to 37 C.F.R. §1.607(a)(1), Applicants request that an interference be declared between the present application and the '862 Patent.

**PROPOSED COUNT**

Pursuant to 37 C.F.R. §1.607(a)(2), Applicants propose the following as the count for the interference between the present application and the '862 Patent:

The Proposed Count:

A disposable absorbent article which defines a front waist section, a rear waist section, and an intermediate section which interconnects said front and rear waist sections, said absorbent article comprising:

- a) a vapor permeable backsheet which defines a Water Vapor Transmission Rate of at least about 1000 grams per square meter per 24 hours, calculated according to a Water Vapor Transmission Test as set forth herein;
- b) a liquid permeable topsheet which is positioned in facing relation with said backsheet;
- c) an absorbent body located between said backsheet and said topsheet; and
- d) a lotion formulation on at least a portion of a body-facing surface of said absorbent article which includes from about 5 to about 95 weight percent of an emollient and from about 5 to about 95 weight percent of a wax;

OR

A disposable absorbent article which defines a front waist region, a rear waist region, and a crotch region which interconnects said front and rear waist regions, said absorbent article comprising:

- a) a vapor permeable backsheet which defines a Water Vapor Transmission Rate of at least about 2300 grams per square meter per 24 hours, calculated according to a Water Vapor Transmission Test as set forth herein;
- b) a liquid pervious topsheet which is positioned in facing relation with said backsheet;
- c) an absorbent core located between said backsheet and said topsheet; and
- d) a skin care composition on at least a portion of a wearer-contacting surface of said absorbent article which comprises from about 10 to about 95 weight percent of an emollient and from about 5 to about 90 weight percent of a wax.

PRESENTATION OF CLAIMS OF THE '862 PATENT AND  
CORRESPONDENCE WITH THE PROPOSED COUNT

Pursuant to 37 C.F.R. §1.607(a)(3), Applicants hereby show the correspondence of Claims 1-18 of the '862 Patent to the Proposed Count as follows:

A. Claim 1

Claim 1 corresponds exactly to the first alternative of the Proposed Count.



B. Claims 2-18

Claims 2-18 correspond substantially to the Proposed Count.

Claims 2-18 depend, directly or indirectly, upon Claim 1 and merely further limit the invention defined in Claim 1. Applicants submit that Claims 2-18 define the same patentable invention under 37 C.F.R. §1.601(n) as the Proposed Count because Claims 2-18 depend upon and are narrower than Claim 1 of the '862 Patent, which corresponds exactly to the first alternative of the Proposed Count.

Accordingly, Claims 1-18 of the '862 Patent correspond to the same patentable invention as defined in the Proposed Count.

PRESENTATION OF CLAIMS OF THE PRESENT APPLICATION AND  
CORRESPONDENCE WITH THE PROPOSED COUNT

Pursuant to 37 C.F.R. §1.607(a)(4), Applicants hereby show the correspondence of Claims 1-5 of the present application to the Proposed Count as follows:

A. Claim 1

Claim 1 of the present application corresponds exactly to the second alternative of the Proposed Count.

B. Claims 2-5

Claims 2-5 of the present application correspond substantially to the Proposed Count.

Claims 2-5 depend, directly or indirectly, upon Claim 1 and merely further limit the invention defined in Claim 1 of the present application. Applicants submit that Claims 2-5 define the same patentable invention under 37 C.F.R. §1.601(n) as the Proposed Count because Claims 2-18 depend upon and are narrower than Claim 1 of the present application, which corresponds exactly to the second alternative of the Proposed Count.

Accordingly, Claims 1-5 of the present application correspond to the same patentable invention as defined in the Proposed Count.

CORRESPONDENCE OF THE FIRST AND THE SECOND ALTERNATIVE  
OF THE PROPOSED COUNT

The first and the second alternative of the Proposed Count define the same patentable invention under 37 C.F.R. §1.601(n) in substantially corresponding language. The correspondence between the first and the second alternative of the Proposed Count is as follows:

The preamble “a disposable absorbent article which defines a front waist section, a rear waist section, and an intermediate section which interconnects said front and rear waist sections” of the first alternative of the Proposed Count corresponds exactly with the preamble of the second alternative of the Proposed Count.

The phrase “a vapor permeable backsheet which defines a Water Vapor Transmission Rate of at least about 1000 grams per square meter per 24 hours” of the first alternative of the Proposed Count corresponds substantially with the phrase “a vapor permeable backsheet which defines a Water Vapor Transmission Rate of at about 2300 g/m<sup>2</sup>/24 hours” of the second alternative of the Proposed Count.

The correspondence exists because the backsheet of the second alternative has the same function as that of the first alternative, and the difference is merely that the second alternative is narrower than the first alternative.

The phrase “a liquid permeable topsheet which is positioned in facing relation with said backsheet” of the first alternative of the Proposed Count corresponds exactly with the phrase “a liquid pervious topsheet which is positioned in facing relation with said backsheet” of the second alternative of the Proposed Count.

According to the ‘862 Patent, a “liquid permeable topsheet” permits “liquid to readily penetrate through its thickness.” (see Col. 13, lines 5-6 of the ‘862 Patent) According to the present application, a “liquid pervious topsheet” also permits “liquids (e.g., menses and/or urine) to readily penetrate through its thickness.” (see Page 22, line 39-Page 23, line 1 of the present application)

The correspondence exists because the topsheet of the second alternative has the same relation to the backsheet and the same function as the topsheet of the first alternative.

The phrase “an absorbent body located between said backsheet and said topsheet” of the first alternative of the Proposed Count corresponds exactly with the phrase “an absorbent core located between said backsheet and said topsheet” of the second alternative of the Proposed Count.

According to the '862 Patent, an "absorbent body" may comprise "a matrix of cellulosic fluff, such as wood pulp fluff, and superabsorbent hydrogel-forming particles." (see Col. 24, lines 8-10 of the '862 Patent) According to the present application, an "absorbent core" may comprise "any of a wide variety of liquid-absorbing materials commonly used in absorbent articles, such as comminuted wood pulp, . . . superabsorbent polymers; absorbent gelling materials; or any equivalent material or combinations of materials, or mixtures of these." (see Page 23, lines 15-23 of the present application)

The correspondence exists because the absorbent elements of both alternatives are similarly located between the topsheet and the backsheet, and the absorbent element of the second alternative comprises substantially same absorbent materials to achieve substantially same absorbent function as the absorbent element of the first alternative.

The phrase "a lotion formulation . . . which includes from about 5 to about 95 weight percent of an emollient and from about 5 to about 95 weight percent of a wax" of the first alternative of the Proposed Count corresponds substantially with the phrase "a skin care composition . . . which includes from about 10 to about 95 weight percent of an emollient and from about 5 to about 90 weight percent of a wax" of the second alternative of the Proposed Count.

The correspondence exists because the composition of the second alternative comprising an emollient and an immobilizing agent is substantially the same as that of the first alternative, and the difference is merely that the second alternative is narrower than the first alternative.

Further, the phrase "a lotion formulation on at least a portion of a body-facing surface" of the first alternative of the Proposed Count corresponds substantially to the phrase "a skin care composition on at least a portion of a wearer-contacting surface" of the second alternative of the Proposed Count.

Based on the '862 Patent, a lotion formulation may be applied to "the bodyfacing surface of the topsheet . . . to transfer such lotion to the wearer's skin." (see Col. 17, lines 32-37 of the '862 Patent) Based on the present application, a skin care may be applied to a wearer-contacting surface, which includes "portions of the topsheet, leg cuffs, waist region, side panels, fastening tabs, etc., which contact a wearer during use." (see Page 4, lines 20-24 of the present invention) Therefore, a wearer-surface of a topsheet is a body-facing surface of the topsheet.

The correspondence exists because substantially same composition is disposed on substantially same surface to effectuate substantially same result in the second alternative as in the first alternative.

IDENTIFICATION OF PATENT AND CORRESPONDENCE  
OF CLAIMS UNDER 37 C.F.R. §1.607(c)

Pursuant to 37 C.F.R. §1.607(c), Applicants respectfully submit Claims 1-5 of the present application are substantially identical to and define the same patentable invention as that of Claims 1, 5, 9-12 of the '862 Patent in substantially corresponding language. Applicants' claims 1-5 are fully supported by the specification of the present and Applicants' parent application.

Specific correspondence of Applicants' Claims 1-5 with Claims 1, 5, 9-12 of the '862 Patent is indicated below.

Applicants' Claim 1 corresponds substantially with Claim 1 of the '862 Patent and dependent Claim 5 of the '862 Patent.

Applicants' dependent Claim 2 corresponds substantially with dependent Claim 9 of the '862 patent.

Applicants' dependent Claim 3 corresponds substantially with dependent Claim 10 of the '862 patent.

Applicants' dependent Claim 4 corresponds substantially with dependent Claim 11 of the '862 patent.

Applicants' dependent Claim 5 corresponds substantially with dependent Claim 12 of the '862 patent.

PRIMA FACIE SHOWING UNDER 37 C.F.R. §1.608

The present application is a divisional of U.S. Serial No. 08/926,532 filed on September 10, 1997 and has an effective filing date of September 10, 1997. Consequently, the current application is entitled to an effective U.S. filing date of September 10, 1997 pursuant to 35 U.S.C. §120, all requirements to perfect such filing date, including copendency and claims to priority, have been met.

The earlier effective U.S. filing date to which the '862 Patent may be entitled to appears to be August 23, 1999, which corresponds to the filing date of its parent application.

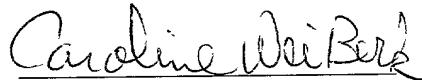
Since the effective U.S. filing date of the present application is over twenty-three months prior to the earliest effective U.S. filing date to which the '862 Patent may be entitled, Applicants should be designated the senior party in any interference that would be declared and are *prima facie* entitled to a judgment in Applicants' favor. Consistent with the language of 37 C.F.R. §1.608 and M.P.E.P. §2308.02, no additional affidavit, evidence, or explanation under 37 C.F.R. §1.608 is presently due or necessary.

CONCLUSION

An interference between the present application and the '862 Patent should be declared in the Proposed Count set forth herein used as the Count in the interference. Further, Claims 1-5 of the present application and Claims 1-18 of the '862 Patent should be designated as corresponding to the Proposed Count.

A favorable and early action on this Request For Interference is respectfully solicited.

Respectfully submitted,  
For: Elder et al.



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